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9 **UNITED STATES BANKRUPTCY COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 **In re:**

13 **PG&E CORPORATION,**

14 **- and -**

15 **PACIFIC GAS AND ELECTRIC**
16 **COMPANY,**

17 **Debtors.**

- 18 ☐ Affects PG&E Corporation
19 ☐ Affects Pacific Gas and Electric
20 Company
21 ☒ Affects both Debtors

22 ** All papers shall be filed in the Lead
23 Case, No. 19-30088 (DM).*

Case No. 19-30088 (DM)

Chapter 11
(Lead Case) (Jointly Administered)

REORGANIZED DEBTORS'
SUPPLEMENTAL STATUS CONFERENCE
STATEMENT

[Related to Docket Nos. 11066, 11288]

Date: December 1, 2021

Time: 10:00 a.m. (Pacific Time)

Place: By Zoom Videoconference Only
United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

1 PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and Electric Company (the “**Utility**”),
2 as debtors and reorganized debtors (collectively, the “**Debtors**” or the “**Reorganized Debtors**”) in
3 the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), submit this brief supplemental
4 status conference statement in advance of the December 1, 2021 hearing to respond to the arguments
5 made by counsel for Fulcrum Credit Partners LLC (“**Fulcrum**”), as transferee of Proof of Claim No.
6 58562 filed by Tuscan Ridge Associates, LLC, and counsel for Tuscan Ridge Associates at the status
7 conference held by the Court on November 9, 2021.¹

8 The Reorganized Debtors strongly oppose Fulcrum and Tuscan Ridge’s arguments that the
9 Court should “double track” its determination of the merits of the Fulcrum claim and PG&E’s
10 defenses thereto with an arbitration of a “cost estimate” for restoration costs.

11 1. PG&E anticipates that the Court will find that there is *no liability for significant*
12 *categories of damages* claimed by Fulcrum/Tuscan Ridge Associates, including but not limited to
13 claimed costs for repair of the main access road and area adjacent to the access road used by the
14 subsequent occupant of the premises to the exclusion of PG&E. Presenting expert testimony and
15 arguing about cost estimates for all items claimed by Fulcrum/Tuscan Ridge Associates before
16 liability is determined would unfairly waste the arbitrator’s time and the parties’ resources.

17 2. Fulcrum/Tuscan puts the cart before the horse by demanding that the parties spend time
18 and money to itemize costs, before the Court decides what liability PG&E has, if any, for such costs.
19 PG&E expects to prove that it is not liable for much, if not all, of the costs asserted in the Proof of
20 Claim. Stated differently, there can be no meaningful estimate of costs of damages through
21 arbitration without the Court’s prior determination of the legal and factual issues necessary to
22 resolve Fulcrum’s claim. The arbitration *must necessarily be based on the Court’s determination of*
23 *the merits of the claim and PG&E’s defenses thereto*, including whether PG&E is liable for
24 restoration costs at all, in light of Tuscan Ridge’s and ECC’s subsequent use of the property and
25 PG&E improvements, and if so, how to determine the appropriate proportional reductions and

26 ¹ Capitalized terms used but not defined herein have the meanings ascribed to them in the Objection
27 or the *Reorganized Debtors’ Opposition to Motion for Relief from Plan Injunction, to Compel*
28 *Arbitration and/or for Abstention* [Docket No. 11263] (the “**Debtors’ Opposition**”), as applicable.

1 credits to PG&E for such costs based on Tuscan Ridge and ECC's subsequent use. Any arbitration
2 proceedings or award prior to such determination serves solely to confound the issues and make for
3 an unordered and inefficient claim determination. Proceeding with arbitration to estimate costs of
4 various elements of potential damages claimed by Fulcrum before the Court's determination of
5 liability would be an undue waste of resources and cannot determine Fulcrum's damages, if there are
6 any, because liability, if any, must be determined first.² The arbitration will be very expensive, time-
7 consuming and require significant discovery, expert witness discovery and opinions and will serve
8 no useful purpose prior to determination of the Claim.

9 3. Contrary to Fulcrum's representations at the Status Conference, the "cost estimate"
10 arbitration is not "a useful exercise" sufficient to justify proceeding with arbitration simultaneously
11 with the Court's claim determination. [See Transcript from November 9, 2021 Status Conference at
12 32:1-6.] Nor will a cost estimate arbitration on alleged items of damage provide "bookends" for
13 resolution as suggested by Fulcrum's counsel. [*Id.* at 31:9-24.] Arbitrating "cost estimates" will not
14 determine Fulcrum's claim or PG&E's liability in connection therewith. There can be no enforceable
15 arbitration award under the circumstances here, where PG&E disputes liability and has asserted
16 defenses to Fulcrum's Proof of Claim. Fulcrum and TRA's request for binding arbitration to proceed
17 simultaneously with litigation of the Proof of Claim before this Court is no more than an obvious
18 attempt to circumvent the Court's necessary determination of the merits of Fulcrum's claim and
19 PG&E's defenses thereto, by seeking an unjustified multi-million dollar arbitration award (which,
20 pursuant to the Letter Agreement, would be payable within 30 days of the arbitrator's determination
21 – even if the Court has not made its liability determination) prior to the merits of the claim being
22 determined by this Court.

23 4. Finally, PG&E never contemplated that any schedule for litigation and determination of
24 the Proof of Claim agreed to by the Parties and submitted to the Court would require binding
25 arbitration *before* the Court's determination of Fulcrum's Claim. Judicial economy and conservation
26 of resources, the possibility (and, in PG&E's view, likelihood) that PG&E will prevail on the merits

27 ² The arbitration provision in the Letter Agreement is very narrow, and the arbitrator does not have
28 authority to determine the legal and factual issues necessary for adjudication of Fulcrum's claim.

1 of the claim dispute, and the interests of justice require that the “cost estimate” arbitration proceed
2 only if the Court first finds that PG&E is liable to Fulcrum on the Proof of Claim and then in the
3 context of that determination.

4 The Reorganized Debtors look forward to discussing these matters with the Court at the
5 hearing on December 1.

6
7 Dated: November 29, 2021

KELLER BENVENUTTI KIM LLP
GOUGH & HANCOCK LLP

8
9 /s/ Jane Kim

10 Jane Kim

11 *Attorneys for Debtors and Reorganized Debtors*
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